



Civil Resolution Tribunal

Date Issued: May 26, 2020

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 14 v. O'Brien, 2020 BCCRT 572*

BETWEEN:

The Owners, Strata Plan VR 14

APPLICANT

AND:

EDWARD O'BRIEN and LUELLA O'BRIEN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about approved alterations to a strata lot.

2. The applicant, The Owners, Strata Plan VR 14 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The strata is represented by a strata council member.
3. The respondents, Edward O'Brien and Luella O'Brien reside in strata lot 13 (SL13) in the strata. SL13 is owned by Luella O'Brien. Edward O'Brien represents the respondents and is not an owner of SL13.
4. The strata says the respondents' neighbour, who resides in strata lot 12 (SL12), installed a wooden kayak rack in the carport of SL12, which the strata ultimately approved, consistent with its bylaws and other approved kayak storage within the strata. The strata seeks an order "upholding" its decision to approve the kayak rack. I note the strata's original request for an order that the respondents "stop complaining about the kayak rack", as set out in the Dispute Notice, was not continued through the tribunal decision process. I infer the strata either decided not to pursue this request or withdrew it. I will therefore not consider it in these reasons.
5. Despite conflicting Dispute Responses filed by the individual respondents, I find the respondents allege the strata did not follow the bylaws by allowing "various racks and storage for kayaks" in the strata complex contrary to an engineer's report. The evidence and submissions show the respondents also alleged nuisance, fire hazard, and safety issues, as I discuss in more detail below. I infer the respondents ask that the strata's claims be dismissed.
6. For the reasons that follow, I dismiss the strata's claims and this dispute.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.

8. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
9. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
10. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).
11. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, VAS14, whereas, based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan VR 14. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.
12. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

Evidence and submissions

13. Aside from providing individual Dispute Responses to the Dispute Notice, the respondents did not provide evidence or submissions until April 28, 2020, after the dispute was assigned to me for adjudication, despite several requests from tribunal

staff to do so. On April 28, 2020, Edward O'Brien wrote to the tribunal by regular mail which I conclude makes up the entirety of the respondents' submissions.

14. I have allowed the respondents' late submissions as I find doing so creates no prejudice to the strata, given the strata was provided an opportunity to reply and elected not to.

ISSUES

15. The issues in this dispute are:
 - a. Did the strata breach its bylaws when it approved the kayak rack for SL12?
 - b. Are there other reasons why the strata should not have approved the kayak rack for SL12?
 - c. Does the tribunal have authority to grant the relief sought by the strata?

BACKGROUND, EVIDENCE AND ANALYSIS

16. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
17. In a civil proceeding such as this, the strata must prove its claims on a balance of probabilities.
18. The strata was created in December 1970 under the *Strata Titles Act* and continues to exist under the SPA. It is a residential strata corporation consisting of 22 townhouse-style strata lots in 3 low-rise buildings. The strata is located a few blocks from the ocean in an area of North Vancouver known as Deep Cove. It is important to note that the strata plan shows individual carports form part of the adjacent strata lot and are not common property.
19. In April 2002, the strata repealed all of its bylaws and filed a complete new set of bylaws at the Land Title Office (LTO). A November 2004 bylaw amendment about common property parking does not apply to this dispute.

20. On July 15, 2016, the strata amended its bylaws about alterations of common property and strata lots, among others. I find the bylaws relevant to this dispute include the April 2002 bylaws plus the July 15, 2016 amendments filed at the LTO, which I discuss in greater detail below, as necessary.
21. There is evidence to suggest a history of complaints between the respondents and the SL12 resident that pre-date the respondents' initial complaint. I find the evidence of ongoing disputes between the neighbours is not relevant to this dispute.
22. In July 2019, Mr. O'Brien submitted an on-line complaint to the strata stating there was an "illegal addition at [SL12]. And hanging canoe to block our view, would you send note to unit to inform that they must remove." Photographs provided in evidence show a wooden rack capable of holding 3 kayaks was installed inside the carport of SL12 next to SL13.
23. In August 2019, the strata met with the resident of SL12 and discussed the respondents' complaint. In an August 6, 2019 letter to Mr. O'Brien, the strata advised of its meeting with the SL12 resident stating it generally agreed with the strata's precedent of allowing small watercraft to be stored in carports "as a normal feature of life" in the strata. The strata advised it had inspected the property and agreed the physical layout of the SL13 deck next to the SL12 carport was unique. The strata stated the SL12 kayak rack was not hidden by foliage common elsewhere in the complex, and noted a "deck view" was not one of the many pleasant features of the complex.
24. The strata also reported that it had discussed with the SL12 resident, the possibility of moving a smaller kayak to the upper storage area or moving the kayak rack towards SL12 to improve the view. The SL12 resident stated that neither option was available because the smaller kayak stored on the lowest rack was used by a senior citizen who was incapable of reaching the upper storage area safely, and to move the rack towards SL12 would impede access for garbage and recycling containers.
25. The strata also noted the kayak rack was secured to the carport "uprights" with carriage bolts. However, given the strata's concern over the rack interfering with the

structural integrity of the carport, it asked the SL12 resident to remove the carriage bolts so that rack would be free-standing, which the SL12 resident agreed to do.

26. In an August 17, 2019 letter to the strata, the respondents alleged an engineer had inspected the kayak rack and found it was “very dangerous and unstable”. A copy of the engineer’s report was not provided in evidence. The respondents also stated the rack interfered with the use and enjoyment of their ‘daily view”, was a fire hazard and was unsightly, among other things. They advised if the rack was not removed, they would take various actions to seek its removal, including legal action.
27. In a September 6, 2019 letter to the strata, the respondents demanded the “unsafe eyesore obstructive and dangerous structure” be removed within 14 days failing which they restated they would take various actions to seek its removal. The respondents also claimed the issue was affecting their health and that they would also seek \$50,000 damages if the rack was not removed.
28. In a September 12, 2019 letter, which I infer was addressed to the strata, the respondents refer to an altered area of SL13 which they allege was a permitted by the strata after the respondents received approval from the strata ownership. No approval details were provided. Based on the strata plan and a photograph provided in evidence, I find the altered area is a deck constructed within SL13 next to the SL12 carport. The respondents said they spend \$2,000 per year on the deck for plants, paint, and extra insurance, and that they use the deck “every day in the afternoon”.
29. Minutes of a strata council hearing with the respondents held October 3, 2019 summarize the respondents concerns as follows (reproduced as written):
 - a. Council is defacto ‘approving’ [the kayak rack] while the change to the [respondents’] deck had to go through extensive approval process which took over a year to address
 - b. A plan for the kayak rack has yet to be submitted

- c. [The respondents report] that an engineer has looked at the rack at [their] request and determined it to be unsafe as it presents a tipping hazard
 - d. Much is spent to beautify the [respondents'] property on an annual basis and this expenditure is wasted because of the presence of the kayak rack
 - e. The kayak rack causes the view from [the respondents'] property to be diminished, thus reducing their enjoyment of their property in contravention of strata bylaws
 - f. The kayak rack is an eyesore
 - g. There was no consultation with neighbours before the construction of the kayak rack
 - h. [The respondents] suggested to the [SL12 resident] a solution whereby the shorter kayak could be put on the top, thus providing a compromise between parties, but this was rejected.
30. On November 12, 2019, after obtaining professional and legal advice, the strata wrote to the respondents, advising the kayak rack was not an alteration to common property, but that it would ensure the rack was re-attached to the carport roof joists. The letter stated that views and lines of sight are not protected in law, and that the strata did not have the expertise to address the respondents' claim for damages. The letter also stated that the strata anticipated its letter would not be acceptable to the respondents and that it would commence tribunal proceedings.
31. Also on November 12, 2019, the strata wrote to the SL12 resident approving their "renovation request". The renovation request is not described in the letter, nor is it described in a separate unsigned "Assumption of Liability Agreement" between the strata and the SL12 resident. However, based on the overall evidence and submissions, I find the SL12 alteration approved by the strata was the subject kayak rack.

32. The respondents April 28, 2020 letter identified above, essentially makes the same arguments as stated in the respondents' September 2019 correspondence I have set out above.

Did the strata breach its bylaws when it approved the kayak rack for SL12?

33. As I have mentioned, the carport next to SL12 is part of SL12 and is not common property. The parties did not refer to any particular bylaws and the respondents did not specify which bylaws were being breached in their correspondence or submissions. However, based on my review of the relevant bylaws, I find the strata did not breach its bylaws when it approved the SL12 kayak rack. My reasons follow.
34. Bylaw 2 requires the owner of SL12 to repair and maintain SL12 except for repair and maintenance that is the strata's responsibility under the bylaws. Bylaw 10 requires the strata to repair and maintain a strata lot but only with respect to the structure and exterior of the building, carports, and other things not relevant to this dispute
35. Bylaw 5, as amended July 15, 2016, requires an owner to obtain the written permission of the strata before making specific alterations to a strata lot that include, among other things, the structure or exterior of a building, parts of a strata lot that the strata must insure under section 149 of the SPA (fixtures), painting common property, and erecting an awning or shade on the outside of a building.
36. Based on the bylaws, I conclude that even though the strata must repair the carport that forms part of SL12, there is no obligation for the SL owner (or resident) to obtain permission to complete alterations to a carport, nor provide a signed liability agreement, unless the alterations involve the carport's structure.
37. Here, the evidence is that the kayak rack was a free-standing structure that was secured (or re-secured) to the carport roof joists. There is no evidence the kayak rack alters the carport structure. On the contrary, I find the fact that the rack was free-standing supports that it did not, and does not, affect the carport structure.
38. For these reasons, I find the kayak rack installation did not require the strata's approval. In particular, I find under the bylaws, the strata was not required to approve a plan for the kayak rack nor seek approval of other strata owners as claimed by the respondents.

39. Bylaw 3 governs the use of property. It includes the restrictions set out in Standard Bylaw 3(1) for nuisance, unreasonable interference with use and enjoyment of another strata lot, illegal use, and additional restrictions that I discuss below.
40. I do not find the installation of the kayak rack to be illegal.
41. “Nuisance” is not defined in the SPA or the bylaws. However, the BC Supreme Court has found nuisance in a strata setting is an unreasonable continuing or repeated interference with a person’s enjoyment and use of their strata lot (see *The Owners, Strata Plan LMS 3539 v. Ng*, 2016 BCSC 2462).
42. I accept the kayak rack, especially with stored kayaks, might impact the respondents’ ability to use and enjoy their deck, but I find that effect is not unreasonable, particularly in strata living. I also find the respondents do not otherwise have an unobstructed view, regardless of placement of the rack and the kayaks on the rack, due to the orientation of the building. In addition, the courts have held that blocking or changing a view is not a legal nuisance (see: *Zhang v. Davies*, 2017 BCSC 1180 and *Christensen v. District of Highlands*, 2000 BCSC 196).
43. Accordingly, I find the installation of the kayak rack does not contravene bylaw 3(1).
44. I find the only additional restriction relevant to this dispute is contained in bylaw 3(7), which prohibits occupants to do anything on a strata lot that would “increase or tend to increase the risk of fire or the rate of fire insurance”, or that would invalidate any insurance policy.
45. There is no evidence, such as a report from the municipal fire inspector or the strata’s insurer, to suggest that the installation of a wooden kayak rack in a carport constructed of wood, is contrary to bylaw 3(7). I do not find the respondents’ broad reference to a 15-year old strata fire inspection report to be adequate support of the respondents’ position the rack contravenes bylaw 3(7).
46. For all of these reasons, I find the strata did not breach its bylaws when it approved the kayak rack installation in SL12.

Are there other reasons why the strata should not have approved the kayak rack for SL12?

47. I accept the strata's assertion that kayaks and kayak racks are a common feature in the strata complex because the respondents did object or state otherwise.
48. I find the only remaining question resulting from the respondents' correspondence and the October 2019 council hearing is whether an engineer objected to the kayak rack installation for safety or other reasons. Again, there is no engineer or other professional opinion in evidence so I am unable to find reason that the rack should not have been approved.

Does the tribunal have the authority to grant the relief sought by the strata?

49. Although, I have found the strata has not acted outside its authority in approving the SL12 kayak rack, I find I cannot grant the relief the strata requests for an order to uphold its decision. I say this because I find I find the strata's requested order is for a declaratory order that is not a permitted order under section 123 of the SPA.
50. Section 123 of the CRTA sets out the orders available in a tribunal strata property claim. Unlike the Supreme Court, the tribunal has no inherent jurisdiction, and cannot make orders in a strata property dispute other than the following:
- a. an order requiring a party to do something
 - b. an order requiring a party to refrain from doing something
 - c. an order requiring a party to pay money
 - d. an order directed at the strata corporation, the council or a person who holds 50% or more of the votes, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights
51. Further, although not binding on me, I adopt the tribunal's reasoning in *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379 at paragraph 67. In *Fisher*, a tribunal vice chair found that the tribunal cannot provide a declaratory order without authority from the CRTA, a tribunal rule, or other legislation, such as the SPA,

except if order is incidental to a claim for relief in which the tribunal has jurisdiction. The vice chair's reasoning was based on the BC Provincial Court's comments in *Shantz, Gorman and Godfroid*, 2012 BCPC 81, and *Dalla Rosa v. Town of Ladysmith*, 2017 BCPC 178.

52. I agree with the vice chair that the tribunal does not have authority under the CRTA, its rules, or the SPA to make a declaratory order. I also find that the declaratory order requested by the strata in this dispute is not incidental to its claim for relief as it is the only requested relief.
53. This decision confirms the strata's decision to allow the installation of the kayak rack in the SL12 carport was reasonable and appropriate. However, given my finding that the tribunal does not have authority to issue declaratory orders, I make no specific order about the SL12 kayak rack installation.

TRIBUNAL FEES AND EXPENSES

54. Under section 49 of the CRTA, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Given my decision to dismiss this dispute, I make no order for reimbursement of tribunal fees.
55. Neither party claimed disputed-related expenses, so I make no such order.
56. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the respondents.

ORDER

57. I dismiss the strata's claims and this dispute.

J. Garth Cambrey, Vice Chair